

destroyed and the claimant has given the court assurance of good behavior in the future. Such a promise does not relieve the goods from liability for past actions and the case is not moot so long as the demand of the United States for condemnation of the goods remains unheard. Under the circumstances, we think that the trial court was not clothed with discretion or authority to decline jurisdiction. It should proceed to hear and determine the charges contained in the libel upon the merits since the right of a party litigant to the judgment of a court upon a matter properly before it is a fundamental aim of the law. *Cohen v. Virginia*, 6 Wheaton 264, 404, 5 L. Ed. 256, 257; *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 40, 29 S. Ct. 192, 53 L. Ed. 382, 48 L. R. A., N. S., 1134, 15 Ann. Cas. 1034; *McClellan v. Carland*, 217 U. S. 268, 282, 30 S. Ct. 501, 54 L. Ed. 762; 35 Am. Jur. (Mandamus) § 254, p. 25.

"The judgment of the District Court is reversed and the case remanded for further proceedings.

"Reversed."

Thereafter, on September 12, 1945, claimant having joined in requesting entry of a decree, judgment of condemnation was entered and the product was ordered destroyed.

**1585. Misbranding of Boncquet Tablets. U. S. v. 83 Bottles and 103 Bottles of Boncquet Tablets, and a quantity of printed matter. Default decree of condemnation and destruction.** (F. D. No. 3677. Sample Nos. 26587-E, 26588-E.)

**LIBEL FILED:** January 21, 1941, Western District of Washington.

**ALLEGED SHIPMENT:** Between the approximate dates of July 15 and November 6, 1940, by the Boncquet Laboratories, from Glendale, Calif.

**PRODUCT:** 83 400-tablet bottles and 103 150-tablet bottles of *Boncquet Tablets* at Seattle, Wash., together with a number of circulars entitled "Adds New Fighting Blood in 9 Days" and a number of placards and display cards.

Analysis showed that the product consisted essentially of yeast, milk sugar, salt, and desiccated green leaf and stem plant material, containing total iron 0.01 grain, total calcium calculated as calcium oxide 0.09 grain, total phosphorus calculated as phosphorus pentoxide 0.19 grain, and protein approximately 3 grains per tablet.

**NATURE OF CHARGE:** Misbranding, Section 502 (a), because of false and misleading curative and therapeutic claims in the labeling, substantially the same as those contained in the labeling of the same product reported in notices of judgment on drugs and devices, No. 1584.

Further misbranding, Section 502 (a), certain designs and statements in the labeling were false and misleading since they represented and suggested that the article contained the active principles of raw liver, vegetable iron, vitamin B complex, fortified with pure crystalline B and G, and assimilable calcium and phosphorus in therapeutically significant amounts. The article did not contain the ingredients mentioned in therapeutically significant amounts. Further misbranding, Section 502 (e) (2), the label of the article failed to bear the common or usual name of each active ingredient.

**DISPOSITION:** On March 27, 1941, Boncquet Laboratories having appeared as claimant, and stipulation having been entered between the United States attorney and the claimant for change of venue, the case was ordered transferred to the Northern District of California. On April 4, 1942, the case having been called and the claimant having failed to appear, judgment of condemnation was entered and the product was ordered destroyed.

**1586. Misbranding of "666." U. S. v. 79 Dozen Bottles of "666" (and 10 other seizure actions against "666"). Decrees of condemnation and destruction.** (F. D. C. Nos. 13086 to 13089, incl., 13801, 14650, 14664, 14665, 14849, 14862, 14863, 15280, 15724, 15804. Sample Nos. 72889-F to 72892-F, incl., 72896-F, 90145-F to 90148-F, incl., 90150-F, 90164-F to 90166-F, incl., 20312-H, 22320-H, 22321-H, 23814-H.)

**LIBELS FILED:** Between the approximate dates of July 31, 1944, and April 7, 1945, Northern Districts of Texas and California, Western District of Arkansas, Eastern District of Oklahoma, and District of Kansas.

**ALLEGED SHIPMENT:** Between the approximate dates of November 9, 1942, and May 29, 1944, by the Monticello Drug Co., from New Orleans, La.

**PRODUCT:** 324½ dozen bottles of "666," bottled in 3-ounce and 6-ounce containers and located at Dallas, Tex., San Francisco, Calif., Texarkana, Ark., Hot Springs, Ark., Nashville, Ark., Muskogee, Okla., Rogers, Ark., and Wichita, Kans.

Examination disclosed that the composition of the article, with the exception of the Muskogee lot, was essentially the same as that of the product which was the subject of seizure in the cases reported in notices of judgment on drugs and devices, No. 1231. The Muskogee lot contained epsom salt, citrated caffeine, iron chloride, and ammonium chloride dissolved in a mixture of water and glycerin, and it contained no quinine or other antimalarial. All lots of the article were similar in appearance and packaging to the drug which contained quinine sulfate and which was previously marketed by the Monticello Drug Co. for the treatment of malaria.

**NATURE OF CHARGE:** Misbranding, Section 502 (a), the labeling on the bottles and carton was misleading in that the numerals "666," appearing on the labeling in red on a yellow background, and the yellow, red, and black color scheme of the other portions of the labeling, and the price of the article printed on the labeling, in combination constituted a statement and device which created the impression and belief that the article was the article of drug "666" which contained quinine sulfate and which was formerly for many years advertised, sold, and used as a treatment for malaria; Section 502 (i) (1), the container was so made, formed, and filled as to be misleading in that its shape, color, and appearance created the impression and belief that the article was the former product which contained quinine sulfate; Section 502 (i) (2), the product was an imitation of another drug in that its name, labeling, and color, and the color, shape, and appearance of the container, simulated the former product; and, Section 502 (i) (3), it was offered for sale under the name of another drug, the former product.

**DISPOSITION:** March 27, 1945. The Monticello Drug Co., claimant for the Wichita lot, filed an answer denying that the product in such lot was misbranded, to which the Government entered a plea of res judicata, alleging that the parties and the issues of the case of *The United States v. 70½ Dozen Bottles of "666,"* filed October 12, 1943, in the Middle District of Georgia, Valdosta Division, were identical with the present case, and that the court in that case had rendered a judgment in favor of the Government. The court, after hearing argument of counsel, sustained the Government's plea of res judicata and judgment was entered condemning the product and ordering its destruction. Between February 26 and June 6, 1945, the sole intervener in the action against the Dallas lot having consented to the entry of a decree, and no claimant having appeared for the remaining lots, judgments of condemnation were entered and the product was ordered destroyed.

**1587. Misbranding of "666." U. S. v. 70 Bottles of "666." Decree of condemnation and destruction.** (F. D. C. No. 15645. Sample No. 22319-H.)

**LIBEL FILED:** On or about March 26, 1945, Western District of Missouri.

**ALLEGED SHIPMENT:** On or about November 3, 1944, by the Griffin Grocery Co., from Muskogee, Okla.

**PRODUCT:** 70 6-ounce bottles of "666" at Joplin, Mo. Analysis showed that the product contained epsom salt, citrated caffeine, iron chloride, and ammonium chloride, dissolved in a mixture of water and glycerin. It contained no quinine or other antimalarial. The article was similar in appearance and packaging to the drug which contained quinine sulfate and which was previously marketed by the Monticello Drug Co. for the treatment of malaria.

**LABEL, IN PART:** "666 Liquid \* \* \* Monticello Drug Company, Jacksonville, Fla."

**NATURE OF CHARGE:** The article was alleged to be misbranded in the same manner as that of the product which was the subject of seizure in the cases reported in notices of judgment on drugs and devices, No. 1586.

**DISPOSITION:** April 23, 1945. The sole intervener having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered destroyed.

**1588. Misbranding of Monarch Vitamins. U. S. v. 3,453 Bottles of Monarch Vitamins. Default decree of condemnation and destruction.** (F. D. C. No. 13413. Sample No. 54632-F.)

**LIBEL FILED:** September 19, 1944, Northern District of Illinois.

**ALLEGED SHIPMENT:** On or about May 24, 1944, by the Cerophyl Laboratories, from Kansas City, Mo.

**PRODUCT:** 3,453 bottles, each containing 225 tablets, of Monarch Vitamins at Chicago, Ill.